No. 96-1342

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

AMERICAN BROADCASTING COMPANIES, INC.,

*Petitioner,*

—v.—

LUNDELL MANUFACTURING COMPANY, INC.,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## SUPPLEMENTAL BRIEF OF PETITIONER

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## SUPPLEMENTAL BRIEF OF PETITIONER[1]

Pursuant to Rule 15.8 of the Rules of this Court, petitioner submits this Supplemental Brief to call to the Court's attention a decision of the United States District Court for the Northern District of Iowa in this matter rendered subsequent to the filing of petitioner's Reply Brief. That decision fully disposes of the contention made by respondent that the outcome of its motion before the district court could affect this Court's consideration of the Petition. *Cf. Board of License Commissioners* v. *Pastore*, 469 U.S. 238, 240 (1985).

In the April 2, 1997 decision of the district court, a copy of which is reprinted in the appendix to this Supplemental Brief, the court denied respondent's motion to enforce a bond that had been filed to secure the judgment pending review by this Court, conditioned on the filing of an appropriate bond by April 8, 1997.

Respondent had contended in its Opposition to the Petition that the pendency of its motion to enforce the bond had the potential to moot the Petition. (Brief in Opposition at 19-20) While petitioner, in its Reply Brief, cited authority in this Court and elsewhere making clear that mootness was not a risk (Reply of Petitioner at 9 n.5), the April 2, 1997 order of the district court denying respondent's motion makes clear beyond dispute that no claim about the technical terms of a bond can interfere with this Court's ability to entertain the Petition and to grant review.

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[1] Pursuant to Rule 29.6, petitioner American Broadcasting Companies, Inc. ("ABC") refers the Court to its Petition and Reply Brief for ABC's Rule 29.6 Statement.

Dated: April 4, 1997

Respectfully submitted,

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# APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

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NO. C 92-4060
Filed: April 2, 1997

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LUNDELL MANUFACTURING COMPANY, INC.,

*Plaintiff*,

—VS.—

AMERICAN BROADCASTING COMPANY, INC.,

*Defendant*.

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ORDER

This matter comes before the court pursuant to plaintiff's January 28, 1997, motion to enforce surety's liability on bond (docket number 126). On January 23, 1997, Federal Insurance Company attempted to file a bond in this case to secure plaintiff's potential recovery on the judgment entered December 19, 1996, pending a ruling on the defendant's application for writ of certiorari to the United States Supreme Court. The caption does not describe the document as a bond but rather is entitled "Judgment In A Civil Case." The bond further purports to provide security pending appeal "to" rather than from the Northern District of Iowa. Obviously, the bond is designed

to secure plaintiff's recovery in the event that the defendant's application for writ of certiorari is denied. Counsel conferred together about the purpose of the bond and agreed to the amount of the bond.

The remedy here is to fix the bond. Both parties are entitled to have an appropriate bond posted with the court. Such arrangements shall be made by the defendant forthwith.

Upon the foregoing.

IT IS ORDERED

That plaintiff's January 28, 1997, motion to enforce surety's liability on the bond is denied on the condition that an appropriate bond be substituted on or before April 8, 1997.

April 2, 1997.

/s/ JOHN A. JARVEY
JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT